No. 01-298

(5)

FILED

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CLERK

In The

Supreme Court of the United States

PAUL D. LAPIDES,

Petitioner,

v.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed August 20, 2001
Certiorari Granted October 29, 2001

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54 pp

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
Georgia's Notices of Removal (4/13/2000) (Also reprinted at Pet. App. 34a)	3
Lapides' Complaint filed in Cobb County Superior Court (3/9/2000)	9
Special Appearance Answer of Board of Regents of the University System of Georgia (4/13/2000)	20
Answer of Defendants Edwin A. Rugg, Timothy Mescon, and Teresa Joyce (4/13/2000)	35
Defendants' Motion to Dismiss Pursuant to FRCP 12(b)(1) and 12(b)(6) (4/13/2000) (Also reprinted at Pet. App. 37a)	48
Plaintiff's Motion to Remand to State Court (5/15/2000)	51

RELEVANT DOCKET ENTRIES

U.S. District Court for the Northern District of Georgia

April 13, 2000	–	Georgia's Notices of Removal (also reprinted at Pet. App. 34a), including Lapides' Complaint filed in Cobb County Superior Court (3/9/2000), Special Appearance Answer of Board of Regents of the University System of Georgia (4/13/2000), and Answer of Defendants Edwin A. Rugg, Timothy Mescon, and Teresa Joyce (4/13/2000)
April 13, 2000	–	Defendants' Motion to Dismiss Pursuant to FRCP 12(b)(1) and 12(b)(6) with Brief in Support of their Motion (also reprinted at Pet. App. 37a)
May 15, 2000	–	Plaintiff's Response in Opposition to Defendants' Motion to Dismiss
May 15, 2000	–	Plaintiff's Motion to Remand to State Court with Memorandum of Law in Support
June 12, 2000	–	Defendant Board of Regents' Response to Plaintiff's Motion to Remand
June 30, 2000	–	Plaintiff's Reply to Defendant Board of Regents' Response to Plaintiff's Motion to Remand
September 8, 2000	–	Order (reprinted at Pet. App. 12a)

September 14, 2000 – Notice of Appeal by Georgia

U.S. Court of Appeals for the Eleventh Circuit

May 24, 2001 – Opinion (reprinted at Pet. App. 1a)

U.S. Supreme Court

August 20, 2001 – Petition for Writ of Certiorari Filed

October 29, 2001 – Writ of Certiorari Granted

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PAUL D. LAPIDES,

Plaintiff,

v.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A RUGG, personally and in his capacity as Vice-President for Academic Affairs at Kennesaw State University; TIMOTHY MESCON, individually and in his capacity as Dean of Coles College of Business at Kennesaw State University; and TERESA J. COVIN, a/k/a TERESA JOYCE, individually and in her capacity as Chair of the Department of Management & Entrepreneurship at Kennesaw State University,

Defendants.

CIVIL ACTION FILE NO. 1 00-CV-0953

NOTICE OF REMOVAL

(Filed April 13, 2000)

To: The Judges of the United States District Court for the Northern District of Georgia, Atlanta Division.

COME NOW Defendants in the above-styled matter and pursuant to 28 U.S.C. §§ 1441 and 1446, and within the time prescribed by law, file this Notice of Removal.

The Defendants file this notice subject to and without waiving any defenses available to the Defendants under state and federal law. The Defendants respectfully show the following:

1.

Plaintiff, Paul D. Lapides, has brought a civil action against the Defendants named above in the Superior Court of Cobb County, said action being designated as *Paul D. Lapides v. Board of Regents of the University System of Georgia, et al.*, Civil Action No. 00-1-01880-24. Plaintiff seeks to recover damages from the Defendants pursuant to 42 U.S.C. § 1983 for alleged violations of Plaintiff's Civil Rights under the United States Constitution and under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e), *et seq.*)

2.

This action is a civil action brought pursuant to 42 U.S.C. § 1983 and under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e), *et seq.*). Plaintiff's causes of action present federal questions over which this Court has original subject matter jurisdiction under the provisions of 28 U.S.C. § 1331, and, accordingly, is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1443. The Defendants attach hereto a copy of the Complaint filed in the Superior Court of Cobb County, Georgia, on or about March 9, 2000 (Exhibit "A").

3.

The Georgia Department of Administrative Services was served with the Complaint on or about March 14, 2000. (Exhibit "B") Defendant Edwin A. Rugg was served with the Complaint on or about March 21, 2000. (Exhibit "C") Defendant Timothy Mescon was served with the Complaint on or about March 24, 2000. (Exhibit "D") Defendant Board of Regents of the University System of Georgia was served with the Complaint on or about March 27, 2000. (Exhibit "E") Defendant Teresa J. Covin was served with the Complaint on or about March 28, 2000. (Exhibit "F") On or about March 31, 2000, Plaintiff filed a Dismissal in the Superior Court of Cobb County dismissing Defendant Mescon from this action without prejudice. (Exhibit "G") Defendants attach hereto a true and accurate copy of the Notice of Removal to be filed in the Superior Court of Cobb County. (Exhibit "H"). Defendant Board of Regents of the University System of Georgia filed their Answer to Plaintiff's Complaint in the Superior Court of Cobb County on April 13, 2000. (Exhibit "I") Defendants Edwin A. Rugg, Timothy Mescon, and Teresa J. Covin filed their Answer to Plaintiff's Complaint in the Superior Court of Cobb County on April 13, 2000. (Exhibit "J") Exhibits "A" through "J" constitute all process, pleadings, and orders, which have been served on the Defendants in this case. Thirty (30) days from the date of service and receipt by the removing parties of the Complaint have not elapsed.

WHEREFORE, the Defendants move that this Notice of Removal be filed, that said action be removed to and proceed in this Court, and that no further proceedings be

had in the Superior Court of Cobb County, State of Georgia.

This 13 day of April, 2000.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

/s/ Loretta L. Pinkston
LORETTA L. PINKSTON 580385
Senior Assistant Attorney General

/s/ Devon Orland
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Assistant Attorney General

/s/ Ralph W. Ellis
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Assistant Attorney General

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

PAUL D. LAPIDES, Plaintiff, v. BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A RUGG, personally and in his capacity as Vice-President for Academic Affairs at Kennesaw State University; TIMOTHY MESCON, individually and in his capacity as Dean of Coles College of Business at Kennesaw State University; and TERESA J. COVIN, a/k/a TERESA JOYCE, individually and in her capacity as Chair of the Department of Management & Entrepreneurship at Kennesaw State University, Defendants.	CIVIL ACTION FILE NO. 00-1-01880-24

NOTICE OF REMOVAL

(Filed April 13, 2000)

To: The Clerk of the Superior Court of Cobb County, State of Georgia, and Patrick W. McKee and Lawrence E. Burke, P.C., attorneys for Plaintiff.

PLEASE TAKE NOTICE that Defendants have, on this date, filed in the United States District Court for the Northern District of Georgia, Atlanta Division, a Notice

of Removal of this action to said Court subject to and without waiving any defenses available to Defendants under state and federal law. All Defendants consent to the Removal of this action. Attached to said Notice of Removal was a copy of the Complaint filed in this State Court action. Defendants hereby give notice of such removal in accordance with the provisions of federal law. By virtue of said law, this case is now removed and further proceedings in the Superior Court of Cobb County are stayed.

This 13 day of April, 2000.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

/s/ Loretta L. Pinkston
LORETTA L. PINKSTON 580385
Senior Assistant Attorney General

/s/ Devon Orland
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IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

PAUL D. LAPIDES Plaintiff vs. BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A. RUGG, personally and in his capacity as Vice-President for Academic Affairs at Kennesaw State University; TIMOTHY MESCON, individually and in his capacity as Dean of Coles College of Business at Kennesaw State University; and TERESA J. COVIN, a/k/a TERESA JOYCE, individually and in her capacity as Chair of the Department of Management & Entrepreneurship at Kennesaw State University. Defendants	CIVIL ACTION FILE NUMBER 00-1-01880-24

COMPLAINT

(Filed March 9, 2000)

COMES NOW, PAUL D. LAPIDES, the Plaintiff in the above-styled action and files this his Complaint, and in support thereof show the Court as follows:

1.

Paul D. Lapides is a professor at Kennesaw State University (hereinafter "KSU") in the Department of Management and entrepreneurship and has been employed at that position for the past 6½ years. Professor Lapides brings this action to address certain libelous, slanderous and defamatory statements and writings which have been disseminated about him and which have been placed in his personnel file at the University. Professor Lapides also seeks to redress complaints of a hostile work environment and the intentional infliction of emotional distress. Finally, Professor Lapides seeks the Court's assistance in protecting his constitutionally guaranteed right to practice his profession free from the procedural due process violations which have jeopardized his future.

2.

Defendant BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA (hereinafter "Board of Regents") may be served through its registered agents for service of process by serving Chancellor Stephen R. Portch, the Chief Executive Officer for the Board of Regents at 270 Washington Street, S.W., Atlanta, Georgia 30334, and by serving the Director of the Risk Management Division of the Department of Administrative Services who is Hugh Farley, at 200 Piedmont Avenue, S.E., Suite 1208, West Tower, Atlanta, Georgia 30334.

3.

Defendant EDWIN A. RUGG is a resident of Cobb County and may be served at his residence located at 2848 Windsor Oaks Trace, N.E., Marietta, Cobb County, Georgia.

4.

Defendant TIMOTHY MESCON is a resident of Fulton County, and may be served at his place of residence located at 320 Seamarsh Court, Atlanta, Fulton County, Georgia 30328.

5.

Defendant TERESA J. COVIN, a/k/a TERESA JOYCE, is a resident of Fulton County and may be served at her residence located at 1352 Middlesex Avenue, Atlanta, Fulton County, Georgia 30306.

6.

This Court has jurisdiction over the claims asserted herein and Plaintiff has served an ante litem notice on the Board of Regents and the Department of Administrative Services as required by O.C.G.A. Section 50-21-26 (a copy of which is attached hereto as Exhibit "A"), and venue is proper herein by virtue of the resident defendants and the fact that all tortious conduct attributable to the employees of the Board of Regents occurred at its KSU campus location in Cobb County, Georgia.

FACTUAL BACKGROUND

7.

Professor Lapides first received notice of a formal student complaint filed against him on August 1, 1997, in a letter from Melvis E. Atkinson, Minority Affairs Coordinator at KSU. The complaint made specific allegations that Plaintiff engaged in sexual harassment of a student.

8.

While Ms. Atkinson's investigations did not find any evidence to corroborate a single allegation made by the student complaintant, the investigation and all follow-up procedures associated therewith have resulted in an on-going course of conduct which has defamed Plaintiff in his profession; resulted in numerous violations of his due process rights and those rights guaranteed to him under KSU's own policies and procedures, violating his liberty and property interests in his constitutionally protected right to practice in his profession.

9.

KSU, through the persons of Defendants RUGG and COVIN have caused improper and defamatory material to be filed in the personnel record of the Plaintiff which currently makes it impossible for him to survive a background check for consideration of any Board of Directors or Board of Advisors positions for which he is routinely considered, or any academic, consulting or other professional employment apportunities [sic].

10.

Documentation of the defamatory material involving an alleged "informal complaint" of inappropriate conduct supposed to have occurred in April 1996, is clearly based upon fabricated documents prepared by COVIN and improperly dissminated [sic] to others, including RUGG who makes reference to the false allegations in his March 12, 1999 letter which is now a part of Professor Lapides' personnel records at KSU. (See Exhibit "B" attached hereto and incorporated herein by reference).

11.

COVIN's use of fabricated documents to defame Plaintiff, and RUGG's use and publication of this information after he knew or should have known of it [sic] origins, constitutes a malicious defamation of Plaintiff with knowledge of the false nature of the statements.

12.

Placement of the aforesaid "libeous matter" in Plaintiff's personnel records by RUGG with actual or constructive knowledge of COVIN's falsification of said records, constitutes a conspiracy by RUGG and COVIN to defame Professor Lapides, making each liable for the acts of the other.

13.

That following the dissemination of defamatory statements to others within the academic community who had no right or need to receive such information from

RUGG, MESCON or COVIN, Plaintiff was treated with contempt and was held out to public ridicule amongst his colleagues and the staff at KSU.

14.

That the placement of said defamatory writings in the personnel file of the Plaintiff and in other public KSU files subjects Professor Lapides to the further injustices identified in *Colonial Stores vs. Barrett*, 73 Ga.App. 839, 38 S.E.2d 306 (1946), by compelling him to publish the defamatory information every time he is considered for a position on a board of directors, board of advisors, at any academic instituion or public corporation.

15.

The maintenance and use of the defamatory writings referred to above violates KSU's policies paragraph XLII, titled: "Procedures For Handling Student Complaints Against Faculty Members" wherein it states:

> "The faculty member will receive copies of *any* written documents produced during the complaint resolution (*at any level*) and will be given the opportunity to respond to each document."' emphasis added

16.

The first notice Professor Lapides ever received of the existence of any written documents concerning the "informal complaint" referred to above was when the falsified documents were produced in response to an

open records request he made to KSU during the process of his defense of the "formal complaint" filed against him over two years after the documents were alleged to have been created.

17.

It is undisputed that COVIN's written documents were never shown to Plaintiff at the time the informal complaint was made and he was never given an opportunity to respond to the false and defamatory content of the documents.

18.

That upon discovering the existence of abuses in the university system at KSU involving the investigation of student complaints against faculty members and trying to secure assistance from superiors to correct the abuses; Plaintiff's employment at KSU was threatened, he was turned down for promotion and he received a disproportionately lower raise than other individuals similarly situated. These actions were taken despite Professor Lapides' evaluations which consistently judged him to be at or above expectations, in all categories of his work at KSU.

19.

That as a result of the manner in which supervisory personnel have treated Professor Lapides, he is currently being subjected to a hostile work environment and has suffered from the intentional infliction of emotionaly [sic]

distress causing him to seek medical attention for the physical damage resulting to him.

20.

The use of falsified documents to defame him and bring his professional reputation into disrepute, the disparate treatment he has received at the hands of his immediate supervisor COVIN, the job threats and warnings to colleagues to disenfranchise themselves from Plaintiff, indicate that the behavior complained of and is described herein by RUGG, MESCON and COVIN is wilful, wanton and intentionally directed toward harming Professor Lapides.

21.

As a result of Professor Lapides' reputation in the business community, his membership on several boards and organizations promoting the advancement of women and minorities in the corporate arena and his numerous articles on the subject, the content of the defamatory material involved herein is clearly of a nature so as to naturally humiliate, embarass [sic] and outrage the Plaintiff.

22.

As a direct result of the cummulative [sic] effects of the foregoing acts and omissions by KSU personnel, Professor Lapides has been placed on medication to help him deal with the inordinate stress brought on by the conduct of the Defendants.

23.

That the allegations of writen [sic] and oral defamation contained herein were specifically calculated to injure Plaintiff and damage his reputation within his profession as an author, consultant and expert in the field of corporate goverance [sic], and as a profesor [sic] and lecturer in this area.

24.

That the placement of the aforesaid information into the Plaintiff's personnel file constitutes an invasion of privacy which portrays Plaintiff in a false light and subjects him to public disclosure of embarassing [sic] facts.

25.

Defendants' tortious actions warrant the award of punative [sic] damages and expenses of litigation including, but not limited to, an award of attorneys fees for the prosecution of this action.

26.

Plaintiff also seeks a judicial finding that the items which have been placed in the public records of KSU are defamatory to Plaintiff, thereby giving rise to a new cause of action by Plaintiff against Defendants every time this information is published to a new party.

27.

Concurrent with the filing of this Complaint, Plaintiff is also filing a complaint with the Equal Employment

Opportunity Commission based upon claims of disparate and discriminatory treatment against him on the basis of religion, gender and for retaliation. Upon the receipt of the appropriate authorization, it is anticipated that these claims will be added to the within and foregoing complaint as an amendment.

WHEREFORE, Plaintiff prays:

(a) That this Court take jurisdiction over the matters presented herein;

(b) That Plaintiff be awarded damages as compensation for his claims in an amount in excess of $1,000,000.00;

(c) That Plaintiff be awarded punative [sic] damages in an amount to be determined by the enlightened conscious [sic] of the jury;

(d) That Plaintiff be awarded his reasonable expenses of litigation including, but not limited to, attorneys fees; and

(e) For such other and further relief as the court deems just and proper.

PATRICK W. MCKEE, ESQ.

BY: /s/ Patrick W. McKee
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by LEB
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IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

PAUL D. LAPIDES, Plaintiff, v. BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A RUGG, personally and in his capacity as Vice-President for Academic Affairs at Kennesaw State University; TIMOTHY MESCON, individually and in his capacity as Dean Kennesaw State University; and TERESA J. COVIN, a/k/a TERESA JOYCE, individually and in her capacity as Chair of the Department of Management & Entrepreneurship at Kennesaw State University, Defendants.	*	CIVIL ACTION NO. 00-1-01880-24

SPECIAL APPEARANCE ANSWER OF DEFENDANT BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

(Filed April 13, 2000)

COMES NOW the Board of Regents of the University System of Georgia, named as a Defendant in the above styled civil action, and without submitting itself to the jurisdiction of this Court responds to the Plaintiff's Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's tort claim should be dismissed due to failure of process, improper service of process, or insufficiency of service of process. Specifically, Plaintiff has failed to cause process to be accomplished as required by O.C.G.A. § 50-21-35.

THIRD DEFENSE

This Court lacks jurisdiction over this Defendant.

FOURTH DEFENSE

Subject matter jurisdiction is lacking.

FIFTH DEFENSE

Plaintiff's claims and remedies are barred, in whole or in part, by the applicable statutes of limitations.

SIXTH DEFENSE

More than ninety (90) days have not elapsed after presentation of a notice of claim to the Department of Administrative Services, nor has the Department of Administrative Services yet issued a denial of this claim, with the result that the present action was commenced prematurely and there is no subject matter jurisdiction of

the Plaintiff's tort claim under the Georgia Tort Claims Act, pursuant to O.C.G.A. § 50-21-26(b).

SEVENTH DEFENSE

The purported ante litem notice attached as Exhibit "A" to Plaintiff's Complaint is insufficient and fails to satisfy the requirements of O.C.G.A. § 50-21-26(a), with the result that the mandatory prerequisites of O.C.G.A. § 50-21-26 have not been satisfied and the Complaint should be dismissed for failure to state a claim upon which relief can be granted.

EIGHTH DEFENSE

Plaintiff has failed to attach to the Complaint a certificate that the requirement of mailing to the Attorney General has been met pursuant to O.C.G.A. § 50-21-35.

NINTH DEFENSE

At all times relevant, this Defendant's employees were exercising due care in the execution of a statute, regulation, rule or ordinance, with the result that this Defendant is immune from suit pursuant to O.C.G.A. § 50-21-24(1).

TENTH DEFENSE

Plaintiff's Complaint should be dismissed to the extent said Complaint alleges losses resulting from the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a

state officer or employee, whether or not the discretion involved is abused, for which there is no waiver of sovereign immunity under the Georgia Tort Claims Act, pursuant to O.C.G.A. § 50-21-24(2).

ELEVENTH DEFENSE

This Defendant's employee committed no tortious act or omission that would entitle the Plaintiff to recover against this Defendant in this case.

TWELFTH DEFENSE

The Plaintiff has failed to exhaust his administrative remedies with regard to his employment and due process claims, with the result that he is precluded by law from bringing such claims in this action.

THIRTEENTH DEFENSE

The Plaintiff is statutorily precluded from recovering in tort an amount in excess of the limitations on damages contained in O.C.G.A. § 50-21-29(b).

FOURTEENTH DEFENSE

Plaintiff's Complaint should be dismissed to the extent it alleges recovery in his tort claim of punitive damages or interest prior to judgment, because such damages are not permitted pursuant to O.C.G.A. § 50-21-30.

FIFTEENTH DEFENSE

Plaintiff's tort claim should be dismissed to the extent it alleges recovery of expenses of litigation, including attorney fees, which are not recoverable pursuant to the Georgia Tort Claims Act.

SIXTEENTH DEFENSE

Plaintiff's Complaint should be dismissed to the extent said Complaint alleges losses resulting from libel or slander, for which there is no waiver of sovereign immunity under the Georgia Tort Claims Act, pursuant to O.C.G.A. § 50-21-24(7).

SEVENTEENTH DEFENSE

The Complaint should be dismissed to the extent it alleges losses resulting from legislative, judicial, quasi-judicial, or prosectorial action or inaction, for which there is no waiver of sovereign immunity under the Georgia Tort Claims Act, pursuant to O.C.G.A. § 50-21-24(4).

EIGHTEENTH DEFENSE

The Complaint should be dismissed to the extent it alleges losses resulting from administrative action or inaction of a legislative, quasi-legislative, judicial, or quasi-judicial nature, for which there is no waiver of sovereign immunity under the Georgia Tort Claims Act, pursuant to O.C.G.A. § 50-21-24(5).

NINETEENTH DEFENSE

The Plaintiff's purported ante litem notice was not timely submitted to the extent the alleged loss, or any part thereof, occurred prior to March 9, 1999.

TWENTIETH DEFENSE

This Defendant is protected by the doctrine of sovereign immunity.

TWENTY-FIRST DEFENSE

Plaintiff's claims are barred by the Eleventh Amendment to the United States Constitution.

TWENTY-SECOND DEFENSE

Plaintiff's claims are barred by res judicata or collateral estoppel.

TWENTY-THIRD DEFENSE

Defendants have at all times acted in good faith and in a reasonable and prudent manner, exercising the degree of due care required in carrying out any duties allegedly owed to Plaintiff and have completely carried out their duties in a reasonable and prudent manner.

TWENTY-FOURTH DEFENSE

Plaintiff has not been deprived of any rights, privileges or immunities secured under the Constitution or the laws of the United States.

TWENTY-FIFTH DEFENSE

Defendants have acted at all times upon the existence of reasonable grounds of belief formed at the time and in light of all circumstances known to them.

TWENTY-SIXTH DEFENSE

All actions taken by Defendants with respect to Plaintiff were taken for legitimate, non-discriminatory, non-retaliatory business reasons.

TWENTY-SEVENTH DEFENSE

Defendants are not liable to Plaintiff because they have not discriminated against Plaintiff on the basis of his religion, gender, or any other unlawful factor.

TWENTY-EIGHTH DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e, *et. seq.*), are barred to the extent that the Plaintiff has failed to satisfy all jurisdictional and administrative prerequisites for such claims.

TWENTY-NINTH DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended, are barred to the extent they were not asserted in his charges of Discrimination filed with the Equal Employment Opportunity Commission and/or the Georgia Commission on Equal Opportunity.

THIRTIETH DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended, are barred to the extent that such claims did not arise within 300 days prior to the filing of his Charge of Discrimination filed with the Equal Employment Opportunity Commission and/or the Georgia Commission on Equal Opportunity.

THIRTY-FIRST DEFENSE

Plaintiff is not entitled to punitive damages because Defendants have not acted with ill will or callous disregard towards Plaintiff's federally guaranteed rights.

THIRTY-SECOND DEFENSE

Plaintiff's claims are barred as Plaintiff has failed to establish that he has brought this action within ninety (90) days after receipt of the statutorily required "right to sue" letter.

THIRTY-THIRD DEFENSE

Defendants reserve the right to raise any additional defenses allowed by law as evidence is discovered in pursuit of this litigation.

THIRTY-FOURTH DEFENSE

Answering the specific paragraphs of Plaintiff's Complaint, this Defendant shows the following:

1.

This Defendant admits the allegations contained in the first sentence of paragraph 1 of the Complaint, except that the Plaintiff is an assistant professor. In response to the remaining allegations contained in paragraph 1 of the Complaint, this Defendant shows that it is without knowledge or information sufficient to form a belief as to the reasons why the Plaintiff brings this action, and can neither admit nor deny the same. However, this Defendant denies that the Plaintiff is entitled to recover based upon the contentions set forth in paragraph 1.

2.

In response to the allegations contained in paragraph 2 of the Complaint, this Defendant admits that service as set forth in paragraph 2 of the Complaint is required, but denies that such service is all that is required to perfect service on this Defendant pursuant to the Georgia Tort Claims Act.

3.

This Defendant admits the allegations contained in paragraph 3 of the Complaint.

4.

This Defendant admits the allegations contained in paragraph 4 of the Complaint.

5.

This Defendant admits the allegations contained in paragraph 5 of the Complaint.

6.

This Defendant denies the allegations contained in paragraph 6 of the Complaint.

7.

This Defendant admits the allegations contained in paragraph 7 of the Complaint, but shows that an informal complaint had been made prior to that date and the Plaintiff was aware of said informal complaint.

8.

This Defendant denies the allegations contained in paragraph 8 of the Complaint.

9.

This Defendant denies the allegations contained in paragraph 9 of the Complaint.

10.

This Defendant denies the allegations contained in paragraph 10 of the Complaint.

11.

This Defendant denies the allegations contained in paragraph 11 of the Complaint.

12.

This Defendant denies the allegations contained in paragraph 12 of the Complaint.

13.

This Defendant denies the allegations contained in paragraph 13 of the Complaint.

14.

This Defendant denies the allegations contained in paragraph 14 of the Complaint.

15.

This Defendant denies the allegations contained in paragraph 15 of the Complaint.

16.

This Defendant denies as pled the allegations contained in paragraph 16 of the Complaint. This Defendant further shows that said documents were not "falsified", and that the only incorrect notation was the reference to the timing of the meeting with the Plaintiff regarding the informal complaint as being after Plaintiff's father's death. The substance of the discussion and results of the

meeting regarding the informal complaint that had been made about the Plaintiff were correct. This Defendant denies that said documents were produced over two years after they were made.

17.

This Defendant denies as pled the allegations contained in paragraph 17 of the Complaint. This Defendant further denies that the documents were defamatory and/or false. This Defendant admits that the documents were not shown to the Plaintiff, but shows that the meeting he had with his department chair was his opportunity to respond to the informal complaint, and his response was to admit the contentions made by the complainant.

18.

This Defendant denies the allegations contained in paragraph 18 of the Complaint.

19.

This Defendant denies the allegations contained in paragraph 19 of the Complaint.

20.

This Defendant denies the allegations contained in paragraph 20 of the Complaint.

21.

This Defendant denies the allegations contained in paragraph 21 of the Complaint.

22.

In response to the allegations contained in paragraph 22 of the Complaint, this Defendant is without knowledge or information sufficient to form a belief as to whether the Plaintiff takes medication for stress. However, this Defendant denies that it is responsible for causing said alleged stress.

23.

This Defendant denies the allegations contained in paragraph 23 of the Complaint.

24.

This Defendant denies the allegations contained in paragraph 24 of the Complaint.

25.

This Defendant denies the allegations contained in paragraph 25 of the Complaint.

26.

This Defendant denies the allegations contained in paragraph 26 of the Complaint.

27.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint, and can neither admit nor deny the same.

THIS DEFENDANT DEMANDS A TRIAL BY A TWELVE (12) PERSON JURY ON ANY ISSUE OF FACT NOT CAPABLE OF RESOLUTION AS A MATTER OF LAW.

This Defendant denies any and all other allegations in the Complaint not referred to herein specifically by number, denies all prayers of the Complaint, and denies that the Plaintiff is entitled to recover against this Defendant.

WHEREFORE, having fully responded to the allegations of Plaintiff's Complaint, this Defendant prays that it be dismissed with costs taxed to the Plaintiff.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

/s/ Loretta L. Pinkston
LORETTA L. PINKSTON 580385
Senior Assistant Attorney General

/s/ Ralph W. Ellis
RALPH W. ELLIS 295840
Assistant Attorney General

/s/ Devon Orland
DEVON ORLAND 554301
Assistant Attorney General

PLEASE ADDRESS ALL
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LORETTA L. PINKSTON
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334-1300
Telephone: (404) 656-3370

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

PAUL D. LAPIDES, Plaintiff, v. BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A. RUGG, personally and in his capacity as Vice-President for Academic Affairs at Kennesaw State University; TIMOTHY MESCON, individually and in his capacity as Dean of Kennesaw State University; and TERESA J. COVIN, a/k/a TERESA JOYCE, individually and in her capacity as Chair of the Department of Management and Entrepreneurship at Kennesaw State University. Defendants,	CIVIL ACTION NO. 00-1-01880-24

ANSWER OF DEFENDANTS EDWIN A. RUGG, TIMOTHY MESCON, and TERESA JOYCE

(Filed Apr. 13, 2000)

COME NOW Edwin A. Rugg, Timothy Mescon, and Teresa Joyce, named as Defendants in the above styled civil action, and respond to the Plaintiff's Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Subject matter jurisdiction is lacking.

THIRD DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

FOURTH DEFENSE

Plaintiff's tort claim against these Defendants should be dismissed because all actions allegedly taken by them were taken while acting within the scope of their official duties or employment with the State of Georgia; thus, these Defendants are not subject to lawsuit or liability therefor, pursuant to O.C.G.A. § 50-21-25(a).

FIFTH DEFENSE

These Defendants committed no act or omission that would entitle the Plaintiff to recover in this case.

SIXTH DEFENSE

The Plaintiff has failed to exhaust his administrative remedies with regard to his employment and due process claims, with the result that he is precluded by law from bringing such claims in this action.

SEVENTH DEFENSE

Plaintiff's Complaint should be dismissed to the extent it alleges recovery of punitive damages or interest prior to judgment.

EIGHTH DEFENSE

Plaintiff's Complaint should be dismissed to the extent it alleges recovery of expenses of litigation, including attorney fees.

NINTH DEFENSE

These Defendants are protected by the doctrine of sovereign immunity.

TENTH DEFENSE

These Defendants are protected by the doctrine of qualified immunity.

ELEVENTH DEFENSE

Plaintiff's claims are barred by the Eleventh Amendment to the United States Constitution.

TWELFTH DEFENSE

Plaintiff's claims are barred by res judicata or collateral estoppel.

THIRTEENTH DEFENSE

Defendants have at all times acted in good faith and in a reasonable and prudent manner, exercising the degree of due care required in carrying out any duties allegedly owed to Plaintiff and have completely carried out their duties in a reasonable and prudent manner.

FOURTEENTH DEFENSE

Plaintiff has not been deprived of any rights, privileges or immunities secured under the Constitution or the laws of the United States.

FIFTEENTH DEFENSE

Defendants have acted at all times upon the existence of reasonable grounds of belief formed at the time and in light of all circumstances known to them.

SIXTEENTH DEFENSE

All actions taken by Defendants with respect to Plaintiff were taken for legitimate, non-discriminatory, non-retaliatory business reasons.

SEVENTEENTH DEFENSE

Defendants are not liable to Plaintiff because they have not discriminated against Plaintiff on the basis of his religion, gender, or any other unlawful factor.

EIGHTEENTH DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e, *et. seq.*), are barred to the extent that the Plaintiff has failed to satisfy all jurisdictional and administrative prerequisites for such claims.

NINETEENTH DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended, are barred to the extent they were not asserted in his Charges of Discrimination filed with the Equal Employment Opportunity Commission and/or the Georgia Commission on Equal Opportunity.

TWENTIETH DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended, are barred to the extent that such claims did not arise within 300 days prior to the filing of his Charge of Discrimination filed with the Equal Employment Opportunity Commission and/or the Georgia Commission on Equal Opportunity.

TWENTY-FIRST DEFENSE

Plaintiff's claims against these Defendants under Title VII of the Civil Rights Act of 1964, as amended, are barred as these Defendants are not "employer[s]" as that term is defined under 42 U.S.C. 2000e.

TWENTY-SECOND DEFENSE

Plaintiff is not entitled to punitive damages because Defendants have not acted with ill will or callous disregard towards Plaintiff's federally guaranteed rights.

TWENTY-THIRD DEFENSE

Plaintiff's claims are barred as Plaintiff has failed to establish that he has brought this action within ninety (90) days after receipt of the statutorily required "right to sue" letter.

TWENTY-FOURTH DEFENSE

Defendants reserve the right to raise any additional defenses allowed by law as evidence is discovered in pursuit of this litigation.

TWENTY-FIFTH DEFENSE

Answering the specific paragraphs of Plaintiff's Complaint, these Defendants show the following:

1.

These Defendants admit the allegations contained in the first sentence of paragraph 1 of the Complaint, except that the Plaintiff is an assistant professor. In response to the remaining allegations contained in paragraph 1 of the Complaint, these Defendants show that they are without knowledge or information sufficient to form a belief as to the reasons why the Plaintiff brings this action, and can

neither admit nor deny the same. However, these Defendants deny that the Plaintiff is entitled to recover based upon the contentions set forth in paragraph 1.

2.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, and can neither admit nor deny the same.

3.

Defendant Rugg admits the allegations contained in paragraph 3 of the Complaint. Defendants Mescon and Joyce are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, and can neither admit nor deny the same.

4.

Defendant Mescon admits the allegations contained in paragraph 4 of the Complaint. Defendants Rugg and Joyce are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, and can neither admit nor deny the same.

5.

Defendant Joyce admits the allegations contained in paragraph 5 of the Complaint. Defendants Rugg and

Mescon are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and can neither admit nor deny the same.

6.

These Defendants deny the allegations contained in paragraph 6 of the Complaint.

7.

These Defendants admit the allegations contained in paragraph 7 of the Complaint, but show that an informal complaint had been made prior to that date and the Plaintiff was aware of said informal complaint.

8.

These Defendants deny the allegations contained in paragraph 8 of the Complaint.

9.

These Defendants deny the allegations contained in paragraph 9 of the Complaint.

10.

These Defendants deny the allegations contained in paragraph 10 of the Complaint.

11.

These Defendants deny the allegations contained in paragraph 11 of the Complaint.

12.

These Defendants deny the allegations contained in paragraph 12 of the Complaint.

13.

These Defendants deny the allegations contained in paragraph 13 of the Complaint.

14.

These Defendants deny the allegations contained in paragraph 14 of the Complaint.

15.

These Defendants deny the allegations contained in paragraph 15 of the Complaint.

16.

These Defendants deny as pled the allegations contained in paragraph 16 of the Complaint. These Defendants further show that said documents were not "falsified", and that the only incorrect notation was the reference to the timing of the meeting with the Plaintiff regarding the informal complaint as being after Plaintiff's father's death. The substance of the discussion and

results of the meeting regarding the informal complaint that had been made about the Plaintiff were correct. These Defendants deny that said documents were produced over two years after they were made.

17.

These Defendants deny as pled the allegations contained in paragraph 17 of the Complaint. These Defendants further deny that the documents were defamatory and/or false. These Defendants admit that the documents were not shown to the Plaintiff, but show that the meeting he had with his department chair was his opportunity to respond to the informal complaint, and his response was to admit the contentions made by the complainant.

18.

These Defendants deny the allegations contained in paragraph 18 of the Complaint.

19.

These Defendants deny the allegations contained in paragraph 19 of the Complaint.

20.

These Defendants deny the allegations contained in paragraph 20 of the Complaint.

21.

These Defendants deny the allegations contained in paragraph 21 of the Complaint.

22.

In response to the allegations contained in paragraph 22 of the Complaint, these Defendants are without knowledge or information sufficient to form a belief as to whether the Plaintiff takes medication for stress. However, these Defendants deny that they are responsible for causing said alleged stress.

23.

These Defendants deny the allegations contained in paragraph 23 of the Complaint.

24.

These Defendants deny the allegations contained in paragraph 24 of the Complaint.

25.

These Defendants deny the allegations contained in paragraph 25 of the Complaint.

26.

These Defendants deny the allegations contained in paragraph 26 of the Complaint.

27.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint, and can neither admit nor deny the same.

THESE DEFENDANTS DEMAND A TRIAL BY A TWELVE (12) PERSON JURY ON ANY ISSUE OF FACT NOT CAPABLE OF RESOLUTION AS A MATTER OF LAW.

These Defendants deny any and all other allegations in the Complaint not referred to herein specifically by number, deny all prayers of the Complaint, and deny that the Plaintiff is entitled to recover against these Defendants.

WHEREFORE, having fully responded to the allegations of Plaintiff's Complaint, these Defendants pray that it be dismissed with costs taxed to the Plaintiff.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

/s/ Loretta L. Pinkston
LORETTA L. PINKSTON 580385
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/s/ Ralph W. Ellis
RALPH W. ELLIS 295840
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PAUL D. LAPIDES,

Plaintiff,

v.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A RUGG, personally and in his capacity as Vice-President for Academic Affairs at Kennesaw State University; TIMOTHY MESCON, individually and in his capacity as Dean of Coles College of Business at Kennesaw State University; and TERESA J. COVIN, a/k/a/ TERESA JOYCE, individually and in her capacity as Chair of the Department of Management & Entrepreneurship at Kennesaw State University,

Defendants.

CIVIL ACTION
FILE NO.
1 00-CV-0953

DEFENDANTS' MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6)

(Filed April 13, 2000)

COME NOW Defendants, Board of Regents of the University System of Georgia, Edwin A. Rugg, Timothy Mescon, and Teresa J. Covin, a/k/a Teresa Joyce, and within the time permitted by law, make and file this

Motion to Dismiss pursuant to Federal Rules of 12(b)(1) and 12(b)(6). This Court lacks subject matter jurisdiction on this action based on the following:

(1) Plaintiff's Title VII claims are barred because the Plaintiff has failed to establish that Plaintiff received a "right to sue" letter from the Equal Employment Opportunity Commission and filed this action within ninety days of that receipt.

Defendants further move that the Court dismiss Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that:

(1) Plaintiff has failed to state a claim for which relief can be granted.

(2) Defendants have Eleventh Amendment Immunity from suit.

(3) Defendants have qualified immunity.

(3) [sic] Defendants are protected by sovereign immunity.

For these reasons, Defendants respectfully request that Plaintiff's Complaint be dismissed in its entirety.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

/s/ Loretta L. Pinkston
LORETTA L. PINKSTON 580385
Senior Assistant Attorney General

/s/ Devon Orland
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/s/ Ralph W. Ellis
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PAUL D. LAPIDES, Plaintiff, v. BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; EDWIN A. RUGG, personally and in his capacity as Vice President for Academic Affairs at Kennesaw State University; and TERESA J. COVIN, a/k/a TERESA JOYCE, individually and in her capacity as Chair of the Department of Management & Entrepreneurship at Kennesaw State University, Defendants.	)	CIVIL ACTION NO. 1:00-CV-0953-TWT

PLAINTIFF'S MOTION TO REMAND TO STATE COURT

Comes now, Paul D. Lapides, Plaintiff in the above-styled action, and within thirty days of removal, pursuant to 28 U.S.C. § 1447(c) files this his motion to remand this case to the Superior Court of Cobb County, State of Georgia. As explained in the memorandum of law submitted in support of this motion, grounds for remand are that the removal procedure was defective.

Wherefore, Plaintiff prays that this Honorable Court remand the case and order Defendants to pay Plaintiff's just costs and actual expenses (including attorney's fees) incurred as a result of the removal.

Respectfully submitted,

/s/ Susan J. Rickertsen
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